

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEVELOPERS SURETY AND INDEMNITY
COMPANY, an Iowa corporation,

Plaintiff,

vs.

CORNELL'S QUALITY CONSTRUCTION,
INC., a Washington corporation, CORNELL
PETRISOR AND RODICA PETRISOR,
husband and wife,

Defendants.

No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY DEMAND

Plaintiff Developers Surety and Indemnity Company ("DSI"), by and through its undersigned attorneys, for its Complaint for Declaratory Judgment against Cornell's Quality Construction, Inc., and Cornell Petrisor and Rodica Petrisor, husband and wife, (collectively the "Cornell's"), alleges as follows:

I. PARTIES

1. DSI is an insurance company incorporated in Iowa and having its principal place of business in California. DSI is, therefore, a citizen of the states of Iowa and California.

2. Upon information and belief, Cornell's Quality Construction, Inc. is a company incorporated in Washington and having its principal place of business in Washington, and is therefore a citizen of Washington. Cornell Petrisor and Rodica Petrisor are residents and

1 citizens of the state of Washington.

2 **II. JURISDICTION**

3 1. This Court has jurisdiction by virtue of 28 U.S.C. Section 1332, as there is
4 complete diversity of citizenship and the amount in controversy exceeds \$75,000.

5 2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391, as
6 Defendants are residents of this judicial district and a substantial part of the events giving rise
7 to this action occurred in this district.

8 3. Pursuant to the Federal Declaratory Judgment Act, 18 U.S.C. Section 2201(a),
9 this Court has the power to declare all rights, duties, and obligations under the relevant
10 insurance policies, whether or not further relief is or could be sought.

11 **III. FACTS**

12 **A. The Underlying Loss and Lawsuit**

13 1. The underlying Complaint arises from the alleged injury to Eric Derovanessian,
14 DDS.

15 2. The underlying Complaint names Cornell Quality Construction, Inc., a
16 Washington corporation, Petrisor Bel-Red Property, LLC, a Washington Corporation, Cornell
17 Petrisor and Jane Doe Petrisor, husband and wife and the marital community comprised
18 thereof, and John Does 1-5 as Defendants.

19 3. Eric Derovanessian, DDS and Anahit Derovanessian, husband and wife and the
20 marital community comprised thereof, filed suit against the Defendants on December 3, 2015
21 in King County Superior Court under Cause No. 15-2-29132-7 SEA (the "Underlying
22 Lawsuit").
23

1 4. The Underlying Lawsuit alleges that Dr. Derovanessian was injured on
2 November 13, 2014 when he tripped and fell in the basement of an office building in which he
3 leased office space for his dental business, Northwest Institute of Cosmetic Dentistry. The
4 office building in which Dr. Derovanessian leases space is located at 15710 NE 24th Street,
5 Bellevue, Washington, 98008.

6 5. The Underlying Lawsuit alleges that Dr. Derovanessian was in the basement in
7 order to service some of his dental equipment that is connected to an apparatus he uses in his
8 dental office, which is located above the basement.

9 6. The Underlying Lawsuit alleges that “defendants” were performing unpermitted
10 and uninspected demolition or other construction work in the basement. The Underlying
11 Lawsuit further alleges that “Defendants” negligently unplugged a piece of Dr.
12 Derovanessian’s equipment connected to the suction apparatus in his dental office.

13 7. The Underlying Lawsuit alleges that Dr. Derovanessian tripped over a pile of
14 construction debris negligently left by “Defendants” and that the debris pile was unmarked and
15 was otherwise unsafe.

16 8. The Underlying Lawsuit alleges that Dr. Derovanessian sustained a “humeral
17 avulsion fracture of his right shoulder and other injuries” as a result of his trip and fall. The
18 Underlying Lawsuit further alleges that Dr. Derovanessian suffered serious and permanent
19 injury as a result of his trip and fall.

20 9. The Underlying Lawsuit alleges that Dr. Derovanessian has suffered physical
21 injuries, medical expenses and other out-of-pocket expenses, physical pain and suffering,
22 mental and emotional pain and suffering, lost income and diminished earning capacity.
23

11. The Underlying Lawsuit alleges that Defendant Petrisor Bel-Red Property, LLC owned the office building at 15710 NE 24th Street, Bellevue, Washington, in which Dr. Derovanessian leased office space.

12. The Underlying Lawsuit further alleges that Dr. Derovanessian leases his office space from Defendant Cornell Petrisor.

13. Upon information and belief, Plaintiffs previously tendered their claim to the insurer for Petrisor Bel-Red Property, LLC, but their claim was denied.

B. The DSI Policy

B. The DSI Policy

1. DSI issued Policy No. BIS00018834-01 to “Cornell’s Quality Construction, Inc.” effective May 1, 2014 to May 1, 2015 (the “DSI Policy”). The DSI Policy is attached as Exhibit A and incorporated herein by reference.

2. Subject to all of its terms, conditions, limitations, and exclusions, the DSI Policy provides general liability coverage to Cornell's Quality Construction, Inc. with per occurrence limits of \$1 million.

3. The DSI Policy contains the following term:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

d. An organization other than a partnership, joint venture or limited liability company, you are an

insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

4. The DSI Policy contains the following exclusion:

EXCLUSION OF CONSTRUCTION MANAGEMENT AND CONSULTING

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to “bodily injury” or “property damage” arising out of or resulting from any insured acting as or in the capacity of a “construction manager” or “construction consultant”.

For purposes of this exclusion, “construction manager” or “construction consultant” means any person or entity undertaking to manage, consult on, advise on, or control construction planning, activities or work except as a “general contractor”.

For purposes of this endorsement, “general contractor” means a contractor, not affiliated with the owner, having a written contract with the owner, and is required in return for monetary compensation by the owner: to supply all labor and material to complete one or more projects using its own employees, material suppliers or subcontractors; to pay for all labor, subcontractors and materials from the general contractor’s own funds in the ordinary course of business in pursuit of profit; to invoice the owner to cover payouts to employees, subcontractors and suppliers as each project progresses; and to have direct written contracts or purchase orders with its subcontractors and suppliers.

5. The DSI Policy contains the following endorsement:

CHANGES IN COMMERCIAL GENERAL LIABILITY POLICY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **SECTION V – DEFINITIONS** is amended as follows.

3. A new definition is added as follows:

“Affiliate” shall mean any person, any corporation or business entity which controls, is controlled by, or is under common control with, such person or entity.

6. The DSI policy contains the following amendment:

**INSURING AGREEMENT AMENDMENT – USE OF
EXTRINSIC EVIDENCE – DUTY TO DEFEND OR
INDEMNIFY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 1. a. of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and Paragraph 1. a. of **SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY** are hereby amended to add the following:

We may look to extrinsic evidence outside of the allegations and/or facts pleaded by any claimant to determine whether we owe a duty to defend or indemnify against a “suit” seeking “bodily injury”, “property damage,” or “personal and advertising injury”. We may rely on extrinsic evidence to deny the defense and/or indemnity of a “suit”.

7. Upon information and belief, Cornell Petrisor is the principal of, and holds all offices of, Cornell’s Quality Construction, Inc., DSI’s named insured.

8. Upon information and belief, the members of Petrisor Bel-Red Property, LLC

1 are Cornell Petrisor and Rodica Petrisor. Petrisor Bel-Red Property, LLC is not an insured
2 under DSI's policy.

3 9. Upon information and belief, the application for building permit for 15710 NE
4 24th Street, Bellevue, Washington, lists Cornell Petrisor as the applicant, Petrisor Bel-Red
5 Property as the owner, and the contractor as "OWNER", with no license number provided.

6 10. DSI has not been provided with any written contract between Cornell's Quality
7 Construction, Inc., and Petrisor Bel-Red Property, LLC, for the construction work that is the
8 subject of the Underlying Lawsuit.

9 11. DSI has agreed to defend Cornell's Quality Construction, Inc. and Cornell
10 Petrisor and Rodica Petrisor with respect to their roles as officers, directors, and/or
11 shareholders of Cornell's Quality Construction, Inc., subject to a full reservation of rights. DSI
12 has appointed independent defense counsel to defend Cornell's Quality Construction, Inc. and
13 Cornell and Rodica Petrisor in the Underlying Lawsuit.

14 12. To the extent that Cornell's Quality Construction, Inc. actually performed any of
15 the work that is the subject of the Underlying Lawsuit, coverage for the claims asserted therein
16 is excluded by the Construction Management and Consulting exclusion set forth above.

17 13. Cornell's Quality Construction, Inc. fails to meet the definition of "general
18 contractor" in the Construction Management and Consulting exclusion because: (1) DSI has
19 not received any evidence that there was a written contract between Cornell's Quality
20 Construction, Inc., and the owner of the building, Petrisor Bel-Red Property, LLC; and (2)
21 Cornell's Quality Construction, Inc. is affiliated with Petrisor Bel-Red Property, LLC as that
22 term is defined in the exclusion.
23

1 14. Because Cornell's Quality Construction, Inc. fails to meet the definition of
2 "general contractor" for the work at issue in the Underlying Lawsuit, any work it did perform is
3 excluded "construction management" or "construction consulting" work.

4 **IV. CLAIM FOR DECLARATORY RELIEF**

5 1. An actual and justiciable controversy exists between DSI and Cornell's Quality
6 Construction, Inc. and its officers, directors, and/or stockholders regarding the availability of
7 insurance coverage under the DSI Policy.

8 2. DSI seeks a declaration that the Policy excludes coverage for the claims asserted
9 in the Underlying Lawsuit against Cornell's Quality Builders, Inc., Cornell Petrisor, and Rodica
10 Petrisor.

11 3. DSI seeks a declaration that it has no duty to further defend Cornell's Quality
12 Builders, Inc., Cornell Petrisor, and Rodica Petrisor against the claims asserted in the
13 Underlying Lawsuit.

14 4. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, DSI demand trial
15 by jury in this action of all issues so triable.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Developers Surety and Indemnity Company respectfully
18 requests that this Court adjudicate and declare the rights of the parties, and that the Court:

19 1. Declare that the Policy excludes coverage for the claims asserted in the
20 Underlying Lawsuit against Cornell's Quality Construction, Inc., Cornell Petrisor, and Rodica
21 Petrisor;

22 2. Declare that Developers Surety and Indemnity Company has no further duty to
23

1 defend Cornell's Quality Construction, Inc., Cornell Petrisor, and Rodica Petrisor; and

2 3. Grant such other relief as the Court may deem just and proper.

3 DATED this 12th day of January, 2016.

4 FORSBERG & UMLAUF, P.S.

5 

6 Carl E. Forsberg, WSBA #17025

7 Kenneth J. Cusack, WSBA #17650

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